

No. 14/13/87-6 Lab./308.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of Executive Engineer-cum-Secretary, Market Committee, Ballabgarh *versus* Ramesh Chand.

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II,
FARIDABAD

Reference No. 416/93

between

THE MANAGEMENT OF M/S EXECUTIVE ENGINEER-CUM-SECRETARY, MARKET
COMMITTEE, BALLABGARH

versus

THE WORKMAN NAMELY SHRI RAMESH CHAND, S/O SHRI MANOHAR LAL, C/O
SHRI ASHOK SHARMA, 2214, SECTOR 3, FARIDABAD

Present :

Shri Ashok Sharma, for the workman.

Shri Pardeep Sharma, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this Court for adjudication,—*vide* Haryana Government Endorsement No. 30496—501, dated the 3rd July, 1992 :—

Whether the termination of services of Shri Ramesh Chand is legal and justified ? If not, to what relief is he entitled to ?

2. Briefly stated that the case of the workman is that he was appointed by the management as Cattle Scarer on temporary basis for indefinite period on 17th January, 1991. His services were terminated on 11th December, 1991 on the ground that he had committed some misconduct. He was never issued chargesheet or warning or show cause notice during the tenure of his service. No domestic enquiry was got conducted by the management with regard to the alleged misconduct. The termination of his services by the management is thus, illegal and unjustified. Consequently, he is entitled to be reinstated into service with continuity in service and full back wages.

3. The management submitted written statement dated 24th February, 1993 stating therein that the post of cattle scarer had become surplus. Apart from this, the work and conduct of the workman was not satisfactory, consequently, the workman was retrenched from service in accordance with law. The impugned order can not be termed as an order passed by way of imposing penalty on the workman, thus, the workman is not entitled to any relief.

4. The workman submitted rejoinder, dated 3rd August, 1993 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed :—

1. Whether the reference is bad in law ?
2. Whether the termination of services of Shri Ramesh Chand is legal & justified ?
If not, to what relief, is he entitled to ? (As per reference).
3. Whether the workman is gainfully employed ? If so, to its effect ?
4. Relief.

6. Both the parties have led evidence.

7. I have heard the authorised representatives of both the parties and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

Issues No. 1 & 2.

8. Both of these issues are interlinked and as such are discussed together.

9. The management has examined one witness MW-1 Surlinder Kumar, Mandi Supervisor and he deposed that the workman was retrenched from service as per law through order Ex. M-1 and retrenchment compensation was sent to him. An intimation to this fact was sent to the Government through letter Ex. M-2. He also produced two other letters Ex. M-3 and Ex. M-4 with regard to the work and conduct of the workman.

10. On the other hand, the workman appeared and deposed the facts mentioned above. He also placed on record a copy of his appointment letter dated 17th January, 1991 Ex. W. 1.

11. The perusal of the office report Ex. M. 4 shows that the Executive Officer cum-Secretary Market Committee, Ballabgarh made the following report to the higher authorities with regard to the work and conduct of the present workman.

"2. Shri Ramesh Chand—Cattle Scarer.—There are two posts of cattle scarers in the committee. The duty of cattle scarer is to protect the arrival of agricultural produce from the stray cattle brought by the farmers—producers for sale in the mandi. He was assigned with his duty in Subzi Mandi but he never performed his duty satisfactorily. The dealers of the Subzi Mandi have been complaining to this office that he is not performing and discharging his duty properly. The business in Subzi Mandi starts at 6-30 A.M. but he causes his appearance in the Mandi at around 10-00 A.M., when the business in Subzi Mandi almost closes around 9-30 A.M. Since he is under the influence of politicians, so he disobeys the orders of the committee's superiors. Thus, he is disobedient and not discharging his duties satisfactorily."

12. The management has not led any evidence to support the decision that the post on which the workman was appointed had become surplus due to lack of work. It is clear from the aforesaid report and order that the services of the workman were terminated by way of punishment. There is no evidence to support the position that the work for which the workman was appointed had ceased to exist in the Subzi Mandi. It is thus, not a case of termination of services simpliciter on account of lack of work. The witness examined by the management admitted in his cross-examination that no charge-sheet was issued to the workman. In other words, the services of the workman were terminated without affording any opportunity to him to show cause before passing the impugned order. The termination of services of the workman is thus, illegal and unjustified and the workman is entitled to be reinstated into service with continuity in service and full back wages. This view also finds support from a decision of our own Hon'ble High Court in the case of *Municipal Committee, Suman versus P. O. Labour Court, Patiala 1992 LLR 797*. Viewed in this context the reference made by the Government cannot be taken to be bad in law as it is not the case of retrenchment simpliciter. Issues No. 1 & 2 are decided against the management and in favour of the workman.

Issue No. 3.

13. The management has not led any evidence to prove that the workman is gainfully employed. It is thus, held otherwise. Issue No. 3 is decided against the management and in favour of the workman.

Issue No. 4.

14. In view of my findings on Issues No. 1 to 3 above, it is held that the termination of services of the workman by the management is illegal and unjustified. Consequently, the workman is entitled to be reinstated into service with continuity in service and full back wages. The award is passed accordingly.

The 8th February, 1995.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

Endorsement No. 201, dated the 8th February, 1995

A Copy, with three spare copies is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

U. B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.